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Sixtieth session
Agenda item 98 (d)
Review and implementation of the Concluding Document of the Twelfth Special Session of the General Assembly: United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific

Letter dated 14 September 2005 from the Permanent Representative of Nepal to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to refer to your report issued on 22 July 2005 entitled "United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific" (A/60/152), and particularly to section III: "Staffing and financing regarding the relocation of the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific" in Kathmandu.

I have noted that with regard to the Regional Centre, the report neither provides the updated information submitted by Nepal to the Department of Disarmament Affairs of the United Nations — the letters of the Permanent Mission of Nepal dated 22 August 2002, 26 September 2003, 15 July 2004 and 2 August 2005 — nor reflects the views of His Majesty's Government of Nepal. As explicitly expressed in the letter of the Mission of the Kingdom of Nepal addressed to the Department of Disarmament Affairs dated 2 August 2005, His Majesty's Government is fully flexible to sort out the outstanding issues relating to the relocation of the Centre to Kathmandu. Privileges and immunities for locally recruited staff of the Centre will be accorded in accordance with provisions laid down in the Convention on the Privileges and Immunities of the United Nations, 1946. His Majesty's Government is also ready to bear the requisite operating costs of the Centre, including additional security-related expenses.

I have the honour to inform you that His Majesty's Government of Nepal holds its continued commitment to relocating the Centre to Kathmandu and its eagerness to sign the host country agreement with the United Nations. Since His Majesty's Government of Nepal is ready to accommodate the concerns of the United Nations with regard to the relocation of the Centre to Kathmandu, I strongly urge you to conclude the host country agreement at the earliest.

05-51787 (E) 220905

I would appreciate it if you could kindly circulate this present letter as a document of the sixtieth session of the General Assembly under agenda item 98 (d).

(*Signed*) Madhu Raman **Acharya**
Ambassador
Permanent Representative

United Nations A/60/370

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Sixtieth session
Agenda item 71 (c)
Human rights questions: human rights situations and reports of special rapporteurs and representatives

Protection of human rights and fundamental freedoms while countering terrorism

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, submitted in accordance with Commission on Human Rights resolution 2005/80.

* As the report had to be submitted very soon after the Special Rapporteur took over the mandate, he intends to provide more information on his first months of activity in his introductory statement to the Third Committee of the General Assembly.

05-51905 (E) 051005

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Summary

The Special Rapporteur submits the present report to the General Assembly pursuant to Commission on Human Rights resolution 2005/80.

This first preliminary report provides a concise outline of the conceptual framework of the mandate. It makes reference to relevant General Assembly and Commission resolutions and acknowledges the work done by the previous independent expert on the protection of human rights and fundamental freedoms while countering terrorism. The Special Rapporteur emphasizes four key features of his mandate, notably complementarity, comprehensiveness, its proactive nature and its thematic approach. These themes will be further developed by the Special Rapporteur in future reports.

I. Introduction

1. The present report is a first preliminary report submitted to the General Assembly by the Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism, pursuant to Commission on Human Rights resolution 2005/80. The Special Rapporteur, Martin Scheinin was appointed by the Chairman of the Commission on Human Rights on 28 July 2005 and accepted his appointment on 8 August 2005. This report provides a concise outline of the conceptual framework of the mandate.

2. The General Assembly has addressed issues relevant to the mandate of the Special Rapporteur on several occasions, notably in its resolution 59/191. This resolution, which must be read together with Assembly resolution 59/195 on human rights and terrorism, reaffirms that acts, methods and practices of terrorism are activities aimed at the destruction of human rights and fundamental freedoms. The Special Rapporteur is conscious of the fact that States' obligation to protect and promote human rights requires them to take effective measures to combat terrorism. Further, he is mindful of the fact that the General Assembly in its resolution 59/195 also reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law. The Special Rapporteur sees the establishment of his mandate as a device to support and advise States in protecting and promoting human rights and fundamental rights while countering terrorism.

3. The independent expert on the protection of human rights and fundamental freedoms while countering terrorism, Robert K. Goldman, appointed for a one-year term pursuant to Commission resolution 2004/87, in his report to the sixty-first session of the Commission (E/CN.4/2005/103) highlighted several features of a future mandate related to the relationship between human rights and the countering of terrorism. Acknowledging that significant steps had been taken by the United Nations human rights system to address the protection and promotion of human rights in the struggle against terrorism, the independent expert referred to the existence of "gaps in coverage" of the monitoring systems of the special procedures and treaty bodies and the pressing need to strengthen human rights protection while countering terrorism, and recommended that the Commission on Human Rights should consider the creation of a special procedure with a "multidimensional" mandate to monitor States' counter-terrorism measures and their compatibility with international human rights law. In accordance with the above the independent expert made recommendations concerning the attributes that such a special procedure should have, many of which are reflected in Commission on Human Rights resolution 2005/80.

4. The mandate of the Special Rapporteur is contained in paragraph 14 of resolution 2005/80:

> "(a) To make concrete recommendations on the promotion and protection of human rights and fundamental freedoms while countering terrorism, including, at the request of States, for the provision of advisory services or technical assistance on such matters;
>
> "(b) To gather, request, receive and exchange information and communications from and with all relevant sources, including Governments, the individuals concerned, their families, their representatives and their

organizations, including through country visits, with the consent of the State concerned, on alleged violations of human rights and fundamental freedoms while countering terrorism, with special attention to areas not covered by existing mandate holders;

"(c) To identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms;

"(d) To work in close coordination with other special rapporteurs, special representatives, working groups and independent experts of the Commission, the Sub-Commission and other relevant United Nations bodies;

"(e) To develop a regular dialogue and discuss possible areas of cooperation with all relevant actors, including Governments, relevant United Nations bodies, specialized agencies and programmes, in particular with the Counter-Terrorism Committee of the Security Council, the Office of the United Nations High Commissioner for Human Rights, the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime, human rights mandate holders and treaty bodies, the Sub-Commission on the Promotion and Protection of Human Rights, as well as non-governmental organizations and other regional or subregional international institutions, fully respecting the respective mandates of the above-mentioned bodies and with a view to avoiding duplication of effort;

"(f) To report regularly to the Commission and to the General Assembly".

II. Conceptual framework

5. In the first weeks of exercising his mandate the Special Rapporteur has started to build up his programme of work, which will include elements such as correspondence with Governments, inter alia in the form of letters and urgent appeals; country visits; liaising with a number of actors such as United Nations organs and bodies, regional organizations, etc. as well as regular reporting to the General Assembly and the Commission on Human Rights. In designing the programme of country visits the Special Rapporteur, in addition to a number of other factors, will pay attention to existing information both on human rights violations and on best practices when countering terrorism, and responses received from Governments to letters sent by the Special Rapporteur. Also, at least for the first visits, the existence of a standing invitation to the special procedures will be of relevance in selecting the countries to be visited.

6. In this brief preliminary report to the General Assembly, the Special Rapporteur wishes to emphasize four features of his mandate by way of outlining his envisaged course of action, the implementation of which will be duly accounted for in his future reports.

7. *Complementarity*. When creating the new mandate, the Commission on Human Rights was mindful of the fact that the High Commissioner for Human Rights, several mandate holders of the Commission, as well as human rights treaty bodies are already active in addressing, within their respective mandates, the human rights implications of various counter-terrorism measures. Consequently, it is emphasized in paragraph 14 (b) of the resolution that when exercising his fact-finding functions,

including through country visits, the Special Rapporteur shall give special attention to areas not covered by existing mandate holders. Similarly, paragraph 14 (e) entrusts the Special Rapporteur with the function of developing a dialogue with all relevant actors and emphasizes the need fully to respect the mandates of these other actors, with a view to avoiding duplication of effort. Indeed, it is the intention of the Special Rapporteur to base his work on the complementary nature of his mandate.

8. *Comprehensiveness*. One reason for the added value of the mandate as compared to other procedures is its comprehensive, integrated or all-encompassing nature, apparent from the general reference to "human rights and fundamental freedoms" in the title. Many of the measures to which States are resorting while countering terrorism in today's world — even taken alone, but much more so when considering the cumulative effect of a range of measures — have an impact on the enjoyment of a wide spectrum of human rights. It was this feature that led the independent expert to call for a "multidimensional" mechanism. The comprehensive nature of the Special Rapporteur's mandate is a consequence of the interdependent and indivisible nature of all human rights. In addition, and as emphasized by the independent expert, the assessment of the human rights impact of counter-terrorism measures must be done in the context of international law, international humanitarian law and refugee law.

9. *Proactive nature*. The Special Rapporteur will build upon those elements of resolution 2005/80 that could be described as proactive and non-confrontational, while making use of the instruments generally available to special rapporteurs, such as letters of allegation, urgent appeals and visits to countries where human rights violations are allegedly occurring in the course of the implementation of counter-terrorism measures. For example, paragraph 14 (a) of the resolution entrusts the Special Rapporteur with the function of suggesting advisory services and technical assistance to Governments. It is evident that such a function may yield its best results when it is exercised in a proactive fashion, i.e. in relation to counter-terrorism measures under consideration. Further, paragraph 14 (c) entrusts the Special Rapporteur with the task of identifying, exchanging and promoting best practices of counter-terrorism measures that respect human rights and fundamental freedoms. The Special Rapporteur is placing himself at the disposal of Governments, and other relevant actors, in order to perform this task, inter alia by undertaking studies on existing or envisaged pieces of legislation on counter-terrorism measures, by producing written comments based on these studies, and by being available for hearings before, for instance, parliamentary committees or national human rights institutions. It is the intention of the Special Rapporteur to identify and promote such best practices throughout the term of his mandate, and to produce a compilation of such practices. A third related feature of the resolution is contained in paragraph 14 (e), concerning dialogue and cooperation.

10. *Thematic approach*. It is the intention of the Special Rapporteur to complement his country-specific work with thematic studies on substantive issues in the field of protection and promotion of human rights and fundamental freedoms while countering terrorism that are not being addressed under other special procedures or by human rights treaty bodies. Without aiming to be exhaustive, or even to indicate an order of priority, the Special Rapporteur wishes to mention three such areas for possible thematic studies: (a) the effects of counter-terrorism measures in relation to freedom of association and assembly; (b) the effects of counter-terrorism measures in relation to economic, social and cultural rights, with

emphasis on specific rights that are not covered by an existing special procedure; and (c) the threat of suicide attacks as a specific challenge to the protection and promotion of human rights and fundamental freedoms while countering terrorism.

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Sixtieth session
Agenda items 64 and 65

Advancement of women

Implementation of the outcome of the Fourth World Conference on Women and of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century"

Letter dated 21 September 2005 from the Permanent Representative of China to the United Nations addressed to the Secretary-General

I have the honour to transmit the Beijing Plus 10 Declaration: solidarity for gender equality, development and peace, adopted at the Beijing Plus 10 Conference to commemorate the tenth anniversary of the Fourth World Conference on Women (see annex).

I would be grateful if you would have the present letter and its annex circulated as a document of the General Assembly under agenda items 64 and 65.

(*Signed*) **Wang** Guangya
Ambassador and Permanent Representative
of the People's Republic of China to the United Nations

05-51914 (E) 260905

Annex to the letter dated 21 September 2005 from the Permanent Representative of China to the United Nations addressed to the Secretary-General

[Original: Chinese]

Beijing Plus 10 Declaration

Solidarity for gender equality, development and peace

We, representatives of Governments, intergovernmental organizations and civil society including non-governmental organizations, assembled in Beijing on the eve of the 60th anniversary of the United Nations, the 10th anniversary of the Fourth World Conference on Women and the 5th anniversary of the United Nations Millennium Summit to commemorate the tenth anniversary of the Fourth World Conference on Women:

1. Applauding the roles and great contributions of women to the realization of equality, development and peace; recognizing the diversity and leadership capacity of women as rich resources and driving forces for development;

2. Affirming that the Fourth World Conference on Women, as all previous world conferences on women, laid a milestone in global women's movement, and that the Beijing Declaration and Platform for Action remain the coherent policy documents for further advancement of women;

3. Greatly inspired by the achievements made in the past decade in the implementation of the Beijing Platform for Action and for women's advancement at all levels;

4. Deeply concerned about obstacles and challenges to the advancement of women, such as persistent poverty, discrimination, violence, armed conflicts, negative impacts of globalization and non-traditional security issues including HIV/AIDS and environmental degradation;

5. Solemnly reaffirming our commitments to the principle of equality between women and men enshrined in the United Nations Charter, and to the Beijing Declaration, the Platform for Action, the Millennium Declaration and the Millennium Development Goals (MDGs) as well as the Convention on the Elimination of All Forms of Discrimination against Women;

6. Stressing the urgency for accelerating full and effective implementation of these documents; stressing also the primary responsibility of Governments, the active role of the civil society including non-governmental organizations, and the importance of international and regional cooperation;

We are deeply convinced that

7. Equality, development and peace are our unwavering objectives, for which the fundamental values of equality, freedom, solidarity, tolerance, respect for nature and shared responsibility must be upheld;

8. Equality between women and men means equality in their integrity and worth as human beings as well as equality in their rights, opportunities and responsibilities; the realization of gender equality requires equal participation and shared responsibilities of both men and women;

9. The Millennium Declaration and MDGs are of great significance for achieving a peaceful, prosperous and just world; gender equality is indispensable in achieving people-centred sustainable development and building harmonious societies as well as achieving all MDGs;

10. Women are a fundamental and invaluable force in peacebuilding, conflict resolution and post-conflict reconstruction;

11. Broad and sustained efforts must be made based upon our common humanity in all its diversity to ensure that globalization becomes a positive force for all women and men;

We are determined to

12. Spare no efforts to speed up the full and effective implementation of the Beijing Platform for Action and the Convention on the Elimination of All Forms of Discrimination against Women, and the attainment of the MDGs;

13. Eliminate all forms of discrimination against women and girls, and ensure their full enjoyment of all human rights as an inalienable, indispensable and integral part of human rights and fundamental freedoms;

14. Intensify efforts on poverty eradication and halve, by the year 2015, the proportion of the world's people in hunger and extreme poverty, strive to free all women and men from the abject and dehumanizing conditions of extreme poverty and free the entire human race from want;

15. Ensure women's equal and full participation in political, economic and social decision-making and strive for the early achievement of gender parity in management in both public and private sectors;

16. Speed up the implementation of Education for All, ensure women's and girls' equal access to information and media resources and strengthen all other measures to enhance capacity-building;

17. Ensure women's enjoyment of health throughout their life cycle and provide affordable and quality health care services; promote women's reproductive health in line with the ICPD Program of Action; eradicate all practices that are detrimental to the health of women and girls;

18. Ensure that women and girls have the knowledge and means to prevent HIV transmission and have equal and universal access to counselling, treatment and care;

19. Promote women's economic independence and economic empowerment, in particular ensure women's equal access to economic, financial and market resources and benefits; promote women's employment and decent work, and improve labour protection and social security systems;

20. Eliminate all forms of violence against women and girls, prevent and combat all forms of trafficking including related exploitation and human rights violations, and safeguard the rights of migrant women;

21 Promote women's equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, increase their role in decision-making with regard to conflict prevention and resolution and support local women's initiatives for peace;

22. Strengthen women's role in environmental protection, environmental management and disaster reduction, increase their access to such basic requirements as clean water, sanitation, energy, health care, food security and the protection of biodiversity, and promote people-centred sustainable development;

23. Implement gender-mainstreaming strategies and provide adequate resources and strong political support to national machineries for gender equality; but ensure that such strategies and machineries do not replace specific actions and programmes targeting women;

24. Meet the needs and respect the rights of women in disadvantaged situations and ensure that they equally participate and benefit in social, political, economic and cultural spheres;

25. Recognize men and boys as gendered persons and further recognize their capacities in bringing about changes in attitudes, relationships and access to resources and decision-making, encourage and support their equal participation in all activities and programmes for gender equality;

26. Create an enabling international environment for women's advancement where peace and solidarity prevail, and promote a balance between economic development and social development among regions, strengthen cooperation particularly in providing least developed countries and developing countries with financial and technical resources and personnel training to enhance capacity-building;

27. Respect, within the international framework, the different paths for gender equality developed by countries in accordance with their own situation; enhance mutual understanding and experience sharing for common development.

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Agenda item 64
Advancement of women

Future operation of the International Research and Training Institute for the Advancement of Women

Report of the Secretary-General*

Summary

Pursuant to General Assembly resolution 59/260, the present report gives updated information on the progress achieved in the revitalization of the International Research and Training Institute for the Advancement of Women (INSTRAW). The Institute made a number of inputs to the review and appraisal of the Beijing Declaration and Platform for Action. In particular, it highlighted women's economic and social contributions to development in the areas of migration and remittances. During the period under review, INSTRAW also pursued activities in the area of women and peace in commemoration of the fifth anniversary of Security Council resolution 1325 (2000). Its research activities were extended to many regions of the world while its communication, outreach and training activities were further enhanced. The full implementation and success of the Institute's programmes and its ability to fulfil its mandate and sustain its activities could be jeopardized in 2006 if Member States do not increase or resume their voluntary contributions.

* Submission of the present report was delayed in order to incorporate updated information.

05-51925 (E) 041005

I. Introduction

1. The present report is submitted pursuant to paragraph 9 of General Assembly resolution 59/260, in which the Assembly requested the Secretary-General to report to it at its sixtieth session on the implementation of the resolution. By its resolution, the Assembly also decided that all projects of the International Research and Training Institute for the Advancement of Women (INSTRAW) should be fully implemented in order to strengthen the Institute, thus enabling it to carry out its mandate effectively.

II. Second session of the Executive Board of the International Research and Training Institute for the Advancement of Women

2. The Executive Board of INSTRAW held its second session at Headquarters on 1 June 2005. The agenda of the session included a review of the implementation of the programme of work during the period from October 2004 to May 2005; the presentation of the proposed work plan and operational budget for 2006; and consideration of matters related to fund-raising activities.

3. The Executive Board took note of the report of the INSTRAW Director on the implementation of the programme of work for the period from October 2004 to May 2005 and expressed its satisfaction with the results achieved by the Institute to date. It also approved the proposed workplan, endorsed the operational budget for 2006 and agreed to consider possible recommendations to be submitted to the General Assembly regarding financial support for the Institute. The Board agreed on the importance of seeking medium-term sustainable financial resources for INSTRAW and requested the Director of the Institute, in consultation with the Secretariat and the President of the Board, to prepare a detailed report, including actions that could be taken by the Board and proposals for alternative mechanisms for fund-raising activities. The Board decided to hold a resumed second session in October 2005 to analyse in greater detail the above-mentioned proposal aimed at achieving the medium- and long-term financial viability of the Institute and consider further steps to be taken in that regard, including the submission of the proposals to the Economic and Social Council and the General Assembly.

III. Implementation of resolution 59/260

A. Beijing+10 review process

4. In compliance with resolution 59/260, paragraph 4, in which the Assembly requested the Institute, in accordance with its mandate, to actively participate and contribute to the review and appraisal of the implementation of the Beijing Declaration and Platform for Action and the outcome document of the twenty-third special session of the General Assembly in the context of the forty-ninth session of the Commission on the Status of Women, the Institute prepared a series of overview reports covering each of the 12 critical areas of the Platform for Action. The reports were prepared with two objectives in mind: (a) to highlight successful experiences, or best practices, for addressing gender equality issues at the local, national and

international levels; and (b) to identify priority areas for future action. The reports are available in English, French and Spanish on the Institute's website. They were also widely disseminated, as a CD-ROM in English, French and Spanish, to delegations, representatives of international organizations and civil society during the forty-ninth session of the Commission on the Status of Women, which conducted the review and appraisal of the implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly in 2000. The CD-ROM was the main feature of an INSTRAW exhibit, organized during the session of the Commission.

5. INSTRAW and the United Nations Development Fund for Women (UNIFEM) co-sponsored with the Mexican Senate, and with the participation of the Chamber of Deputies, Government officials and civil society, a workshop to establish a mechanism to follow-up on the implementation of the Beijing Platform for Action, the achievement of the Millennium Development Goals, the Convention on the Elimination of Discrimination Against Women and other international agreements relating to gender equality.

6. Following up the Beijing+10 review and appraisal, INSTRAW, in cooperation with the Ministry for Women's Affairs of the Dominican Republic, organized a workshop in late August 2005 to review and assess national implementation of the Beijing Declaration and Platform for Action and the outcome document of the twenty-third special session of the General Assembly. The workshop included the participation of Dominican parliamentarians, Government officials, civil society leaders and representatives of other United Nations organizations in the country. The workshop also linked the implementation of the Beijing Platform for Action with the Millennium Development Goals and the Millennium Project.

B. Implementation of the workplan and operational budget for 2005

7. In paragraph 5 of the same resolution, the General Assembly requested that the Institute, when formulating future programmes and projects, take into account the particular challenges facing women in developing and least developed countries in the different regions. In that spirit, INSTRAW prepared and implemented the work programme for 2005 approved by its Executive Board at its resumed first session, held on 1 October 2004. The four priority strategic areas were: (a) migration-related issues (remittances, trafficking); (b) information and communication technologies and women's empowerment; (c) security and gender; and (d) women's political participation.

8. Each area included policy-oriented applied research, capacity-building, and information and communication activities. The activities inside these areas were developed with core and extrabudgetary funds.

1. Migration-related issues (remittances and trafficking)

9. Remittances are an increasingly significant source of foreign currency, national income and financing of imports, and a contribution to the balance of payments. They also reduce poverty, lower internal migration, increase women's employment and investment and create local demand for goods and services. INSTRAW has finalized the development of a research framework for gender

analysis on remittances, as well as on their impact on household and gender relations.

10. Despite the increasing number of migrant women workers and the growing importance of remittances for national economies and the economic well-being of many families in developing countries, little systematic research has been conducted on the gender dimensions of remittances. A critical review of the flows and impact of remittances from a gender perspective could facilitate the implementation of programmes aimed at harnessing the development potential of remittances. The INSTRAW research framework addresses issues such as traditional forms of inheritance; access to credit; limitations on property ownership; use, control and distribution of resources within the household; the sexual division of labour; and decision-making within households and communities.

11. The framework was published for presentation during a seminar on gender and remittances, organized in collaboration with the Inter-American Development Bank and held on 30 June 2005, during the International Forum on Remittances (28-30 June 2005, Washington, D.C.). During the session, INSTRAW was joined by renowned academic experts on gendered economic and cultural changes produced by migration; United Nations representatives, including the Under-Secretary-General for Economic and Social Affairs, the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women and the United Nations Population Fund (UNFPA) Regional Director for Latin America and the Caribbean; and representatives of Governments and civil society.

12. Currently, INSTRAW is developing a methodology for conducting case studies in the Dominican Republic, El Salvador, the Philippines and various countries in Africa and Eastern Europe. The studies will be conducted in partnership with United Nations organizations to highlight the economic contribution of women to their countries of origin, as well as to identify policies, programmes and guidelines for empowering women in decision-making processes and enhancing local development through the inclusion of women's needs and priorities.

2. Security and gender

13. In 2004, INSTRAW undertook several activities in line with the upcoming review by the Security Council of the implementation of its resolution 1325 (2000), entitled "Women, peace and security". Two e-discussions were held on the themes "Gender and security sector reform" and "Gender and conflict prevention/conflict resolution". The majority of participants agreed that the definition of security needed to be broadened and that women's and gender issues were lacking in current security sector reform and conflict prevention and resolution initiatives. Participants from both discussions identified research and capacity-building as priorities and stressed the need to integrate gender issues into security sector reform assessments. In response to positive feedback from the participants and their expressed desire to continue discussions on those subjects, INSTRAW has set up a gender and security sector reform network. Summaries of the discussion are available on the Institute's website.

14. As part of the Institute's research programme on gender, peace and security issues, a new website section available in English, French and Spanish, has been developed on gender and security sector reform. The section contains background information and an annotated bibliography of information resources and

international agreements, a fact sheet and a listing of events and organizations related to the topic.

15. In addition, the Institute, in partnership with the World Food Programme, has developed a project proposal on improving the human security of vulnerable Haitian women in the Dominican Republic. The project is aimed at increasing knowledge regarding Haitian women in the Dominican Republic in order to: (a) orient future policy, research and projects; (b) improve the living standards of Haitian women in the Dominican Republic through capacity-building and training in HIV/AIDS and other health issues, nutrition, civil rights, employment and physical security; and (c) reduce Haitian women's insecurity through increased awareness and knowledge. The project proposal is currently being discussed with potential partners.

16. In the context of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, INSTRAW makes an ongoing gender-related contribution to a network created to monitor the efforts to reduce the illicit trade in small arms and light weapons.

17. As part of its efforts to enhance capacity-building, INSTRAW is reviewing a training package on public security developed by a Subregional Resource Facility of the United Nations Development Programme in order to integrate gender aspects. As part of the package, INSTRAW will develop a specific tool and a training module on the prevention of violence against women as a key element in public security.

3. Women's political participation

18. The Institute is in the process of negotiating extrabudgetary funding with the Spanish Agency for International Cooperation to fund a three-year project devised to strengthening governance with a gender focus and the participation of women at the local level. The project is aimed at building a knowledge base on the gender aspects of governance and political, economic and social inclusion of indigenous populations, to favour the exchange of good practices and lessons learned, and to strengthen local and/or national knowledge and capacity to improve women's political participation and leadership at the local level.

19. As the project has a special emphasis on indigenous populations in Central American and Andean countries, in early 2005, INSTRAW met with ministers responsible for women's and gender affairs from those countries to seek their views on the project. Representatives of academic institutions and the United Nations system were invited to participate in the meeting. The initiative was welcomed by ministers as an opportunity to enhance regional cooperation at the ministerial level. They also welcomed its emphasis on strengthening women's participation in leadership and the management of resources at the local level.

20. INSTRAW has finalized an annotated bibliography on women's political participation in local governance in Latin America, which is available on the Institute's website.

21. A new project proposal on women's political participation at the local level in the Maghreb region was developed and was presented to potential donors. The project is aimed at contributing to the promotion of women's rights, gender equality and women's political participation and leadership in the planning and administration of local governments in that region.

22. A special section of the website is currently being prepared and will include a variety of resources on gender and governance, and women's political participation. The section was to be available by late August 2005.

23. In order to create a space for new voices on gender equality from academia, policymakers and practitioners, in March 2005, INSTRAW launched a new paper series entitled *New Voices, New Perspectives*. Directed towards post-graduate students worldwide, the paper series will provide an opportunity for students enrolled in gender-related programmes to contribute to global, national and local debates on women's and gender issues. Papers have been invited on four priority research areas: gender and remittances; gender and information and communication technologies; gender and security sector reform; and gender and political participation at the local level. Twelve papers will be selected and published online in their original language (English, French or Spanish). Three outstanding papers will be selected for printing and their authors invited to participate at an academic event relating to the paper's theme.

24. A study entitled "The United Nations and equal opportunities between men and women" was published by INSTRAW in its original language (Spanish), and is also available online at the Institute's website. The study presents an overview of gender issues in the United Nations throughout its history.

4. Capacity-building and information

25. In response to the demonstrated demand for training materials, in particular from organizations in less developed countries, INSTRAW expanded its collection of gender training materials to include additional information, such as a mapping of existing programmes, materials and tools; a roster of training institutes and centres; and the identification of gaps and needs. Information was first made available online in June 2005, though activities will continue throughout the year.

26. The database of resources on gender mainstreaming was redesigned in order to make it more user-friendly. Approximately 300 new resources were added. The database features resources on issues of importance to less developed countries, such as water, agricultural and rural development, and health and HIV/AIDS.

27. With funds from a contribution received from the Government of South Africa earmarked for a project on HIV/AIDS and gender in Southern Africa, INSTRAW has produced a manual for home-based caregivers, the majority of whom are illiterate and semi-illiterate women in poverty-stricken areas. The main objective of the manual is to provide family caregivers with a tool adapted to their circumstances and specific needs that will increase their technical skills in order to improve the home-based care of people living with HIV/AIDS. The manual will be piloted in Zimbabwe by the researchers of a joint project of Stanford University and Zimbabwe University on women and HIV/AIDS. The manual was submitted to the Joint United Nations Programme on HIV/AIDS and will be distributed in the field as part of the testing process. Other countries, such as the Dominican Republic, Haiti and Mozambique, have shown interest in adapting the manual to their specific contexts.

28. In support of national activities for capacity-building in the Dominican Republic, in April 2005, INSTRAW staff participated in a week-long workshop entitled "Project development with a gender perspective" funded by the World

Health Organization (WHO)/Pan-American Health Organization (PAHO). The workshop brought together representatives of national governmental institutions and United Nations agencies based in the Dominican Republic.

29. As part of its capacity-building programme in the Dominican Republic, INSTRAW has also initiated a series of workshops on a variety of issues, including women and youth, migration and ageing.

30. The Institute's website has been enriched by *INSTRAW Review*, a periodic magazine including opinion pieces, interviews and relevant news items on gender issues worldwide. The *Review* is published online in English, French and Spanish, and distributed to various mailing lists. Past issues have focused on violence against women, gender and the Millennium Development Goals, and gender, peace and security. An upcoming issue will focus on gender and energy.

5. Institutional development

31. Considerable progress has been made in the past year to reposition INSTRAW and re-establish its credibility. In this regard, the Institute continued efforts to strengthen partnerships between INSTRAW and other organizations of the United Nations system and raise the level of cooperation with Governments, civil society organizations and the private sector in various countries.

32. Recently, INSTRAW and UNIFEM jointly organized a meeting entitled "Gender information in the Americas" (New York, 26 and 27 May 2005), at which information officers from United Nations agencies and non-governmental organizations gathered to discuss the availability and dissemination of gender information. Participants also identified the gaps and challenges in collecting and disseminating gender information and developed a common strategy to overcome those challenges. Although the meeting addressed the situation prevailing in only one region, its participants agreed that the lessons learned at the meeting were applicable to other regions of the world.

33. Among other partnerships, INSTRAW intends to collaborate with the United Nations Educational, Scientific and Cultural Organization (UNESCO) in a number of areas. One area would entail joint projects to design and develop a series of online courses on a wide range of themes, such as gender and information and communication technologies, gender and HIV/AIDS, trafficking of women, and gender and peace. Another area for collaboration with UNESCO concerns the establishment of a Palestinian women's resource centre to serve as a clearinghouse on information related to Palestinian women's issues.

34. The Institute is also working with UNFPA and WHO on an overview document on gender, ageing and health, intended as a follow-up to the Beijing+10 review and appraisal process. In this connection, the Institute participated in a meeting held in New York, from 28 February to 1 March 2005 to prepare the first draft of the document for further review and fine-tuning through e-mail correspondence. The final document will be issued in October 2005.

35. The Institute participated at a meeting of the PAHO Subcommittee on Women, Health and Development held in Washington, D.C., on 15 and 16 March 2005. INSTRAW made a presentation entitled "Missing links: gender equality and the Millennium Development Goals". The presentation pointed out that the Goals, as a powerful tool for generating consensus on international development, had the

potential to further the cause of gender equality and the empowerment of women if each of the Goals took into account women's specific needs and priorities: for example, though the elimination of violence against women is crucial for the achievement of gender equality, violence against women was not reflected in the Goals. In conclusion, the presentation affirmed that the Goals were a practical starting point for the implementation of the Cairo Programme of Action and the Beijing Platform for Action, which in turn, contain perspectives and actions essential for the achievement of the Millennium Development Goals.

36. INSTRAW collaborated with the Office of the Special Adviser on Gender Issues and Advancement of Women/Division for the Advancement of Women of the Department of Economic and Social Affairs and other organizations on a number of other initiatives, including the task force for the Secretary-General's study on violence against women, and the gender and development section of Development Gateway, in which INSTRAW is now a "cooperating organization".

37. In other areas, INSTRAW continued to cooperate with the United Nations Online Network in Public Administration and Finance. It also became a member of the UN-Energy network, participated in two meetings organized by the United Nations on energy held in Washington, D.C. and New York, and took part in online discussions and videoconferences for the preparation of an overview document on energy and the Millennium Development Goals that was launched on 22 July 2005. As a result of those efforts, the final text better reflected gender aspects and women's concerns.

38. The Institute has been an active participant in the United Nations Inter-Agency Network on Women and Gender Equality, and has joined the specific task forces on gender equality and the Millennium Development Goals; gender and information and communication technologies; women, peace and security; WomenWatch; gender and water; and indigenous women.

39. The Institute also participated on a regular basis in inter-agency meetings of the United Nations system in the Dominican Republic, including meetings of the thematic groups on gender issues and HIV/AIDS. It provided consultative and technical support on gender issues to Dominican national institutions in connection with the Millennium Project.

IV. Resource situation and support for the revitalization process

40. On the basis of the decision of the Fifth Committee contained in its report A/59/641, the General Assembly decided, by its resolution 59/276, section XIII, to appropriate $1,092,400 for future operation of INSTRAW against the contingency fund, to be used in the event of a shortage of voluntary contributions for the functioning of the Institute in 2005. The same decision called for a report of the Secretary-General to the Assembly as a matter of priority early during the main part of its sixtieth session on the overall financial situation of the Institute. Accordingly, the financial situation of INSTRAW will be discussed in detail in that report.

41. In order to provide for uninterrupted operations of the Institute during the first six months of 2005, the amount of $546,200 (representing 50 per cent of the subvention of $1,092,400, approved by the General Assembly in its resolution 59/276) was transferred to the INSTRAW Trust Fund at the end of December 2004.

42. In accordance with the Institute's programme of activities envisaged for 2005, the Director continued implementation of the fund-raising strategy initiated in 2004 aimed at increasing financial support for both INSTRAW core activities and extrabudgetary projects. As a result, contributions received by the Institute for the period 1 January to 31 August 2005 amounted to $691,295, including a major contribution of $604,400 received from the Government of Italy on 15 August 2005, the largest voluntary contribution received by INSTRAW since 1997 ($824,000). Additional outstanding pledges made for 2005 amount to $58,120, bringing the total level of INSTRAW projected income for the current year to $762,758.

43. The Institute has developed 16 project proposals and 10 project profiles amounting to a total of $21,613,615. The projects and profiles are under discussion with potential donors for funding. Several donors have already expressed their interest in lending their support to the Institute. The host country continued to provide support in sustaining INSTRAW.

44. The voluntary contributions by Member States to the INSTRAW Trust Fund, recorded to date in 2005, indicate that INSTRAW should be in a position to fund its operations for the period from September to December 2005 without utilizing the second part of the subvention.

V. Conclusion

45. **The implementation of the INSTRAW strategic framework 2004-2007 and its programme of work for 2005 based on specific thematic areas (gender, migration and remittances; women's political participation at the local level; and gender and security sector reform) are making a contribution to programmes that benefit women in developing countries. At the same time, a two-pronged strategy used by INSTRAW to strengthen its research and training capacities as part of its core activities and to develop a comprehensive project portfolio for extrabudgetary funding provided the necessary flexibility and increased efficiency of fund-raising efforts.**

46. **During the period under review, INSTRAW made a number of inputs to the review and appraisal of the Beijing Declaration and Platform for Action. In particular, it highlighted women's economic and social contributions to development in the areas of migration and remittances. It pursued programmes in the area of women and peace in commemoration of the fifth anniversary of Security Council resolution 1325 (2000). INSTRAW was also expanding its research to different regions of the world and had enhanced its communication, outreach and training activities.**

47. **Although in the period under review the Institute enjoyed greater financial support from Member States, the United Nations system and civil society, the full implementation and success of the Institute's programmes and its ability to fulfil its mandate and sustain its activities in 2006 will be contingent on Member States providing the required level of resources.**

United Nations A/60/373

General Assembly

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Sixtieth session
Item 8 of the provisional agenda*
General debate

Letter dated 19 September 2005 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the General Assembly

I have the honour to enclose herewith the text of the written statement of the delegation of the United Kingdom in exercise of the right of reply to the remarks made by Navinchandra Ramgoolam, Prime Minister of the Republic of Mauritius in the General Assembly on 19 September 2005 (see annex).

I should be most grateful if you could arrange to have the text of the present letter and the annexed statement circulated as a document of the General Assembly under agenda item 8.

(*Signed*) Emyr **Jones Parry**

* A/60/150.

05-51961 (E) 230905

Annex to the letter dated 19 September 2005 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the General Assembly

Statement of the delegation of the United Kingdom of Great Britain and Northern Ireland in exercise of the right of reply to the remarks made by the Prime Minister of Mauritius in the general debate on 19 September 2005

The British Government maintains that the British Indian Ocean Territory is British and has been since 1814. It does not recognize the sovereignty claim of the Mauritian Government.

However, the British Government has recognized Mauritius as the only State which has a right to assert a claim of sovereignty when the United Kingdom relinquishes its own sovereignty.

Successive British Governments have given undertakings to the Government of Mauritius that the Territory will be ceded when no longer required for defence purposes.

The British Government remains open to discussions regarding arrangements governing the British Indian Ocean Territory or the future of the Territory. The British Government has stated that when the time comes for the Territory to be ceded it will liaise closely with the Government of Mauritius.

The British Government values its close and constructive cooperation with the Government of Mauritius on a wide range of issues and looks forward to this continuing.

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Sixtieth session
Agenda item 7 (b)
Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protecting human rights and fundamental freedoms while countering terrorism*

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 59/191 concerning protecting human rights and fundamental freedoms while countering terrorism. It also responds to the request contained in resolution 2005/80 of the Commission on Human Rights that the United Nations High Commissioner for Human Rights report regularly to the General Assembly on the implementation of that resolution. The present report provides an overview of recent developments in the United Nations in the area of protecting human rights while fighting against terrorism and salient points emerging from an expert seminar hosted by the Office of the United Nations High Commissioner on Human Rights in June 2005 and conclusions aimed at further defending human rights in the counter-terrorism context. It notes that while States have a duty to fight against terrorism, their actions must be in accordance with international human rights, humanitarian and refugee law, which is currently not the case in many instances.

* This report was submitted after the deadline in order to reflect the most up-to-date information possible.

05-52075 (E) 101005

I. Introduction

1. The General Assembly, in resolution 59/191, reaffirmed that States must ensure that any measures taken to combat terrorism comply with their obligations under international law, particularly humanitarian, human rights and refugee law. It also reaffirmed the obligation of States to respect certain rights as non-derogable in any circumstance and recalled that, any permissible measures derogating from the International Covenant on Civil and Political Rights (ICCPR) must be in accordance with the provisions of article 4 of the Covenant and of an exceptional and temporary nature. The Assembly called on States to raise awareness of the importance of these obligations with national authorities involved in combating terrorism.

2. The Assembly encouraged the Security Council and its Counter-Terrorism Committee to strengthen cooperation with relevant human rights bodies, in particular with the Office of the United Nations High Commissioner for Human Rights (OHCHR). It requested the human rights treaty bodies and relevant mechanisms and special procedures of the Commission on Human Rights to consider the protection of human rights and fundamental freedoms in the context of measures to combat terrorism and to coordinate their approaches as appropriate. The Assembly called on the United Nations High Commissioner for Human Rights to continue to examine the question of protection of human rights and fundamental freedoms while countering terrorism and to make general recommendations concerning the obligations of States in this regard. It also requested the High Commissioner to provide assistance and advice to States, upon their request, and relevant United Nations bodies on the protection of human rights while countering terrorism.

3. The present report is submitted pursuant to resolution 59/191, and to resolution 2005/80 of the Commission on Human Rights.

II. Recent developments in the United Nations in the area of human rights and counter-terrorism

4. In its report *A more secure world: Our shared responsibility*, the High-level Panel on Threats, Challenges and Change recommended that the United Nations develop a comprehensive strategy, respectful of human rights to respond to the threat of terrorism. In his address to the International Summit on Democracy, Terrorism and Security in Madrid on 10 March 2005, the Secretary-General outline five elements of this strategy, which are to defend human rights in the struggle against terrorism, to dissuade disaffected groups from choosing terrorism as a tactic, to deny terrorists the means to carry out their attacks, to deter States from supporting terrorist groups and to develop State capacity to prevent terrorism. In that address, the Secretary-General observed that international human rights experts were unanimous that many measures currently taken by States to counter terrorism infringe on human rights and fundamental freedoms, and cautioned that compromising human rights could not serve the struggle against terrorism; on the contrary, the respect for human rights was not only compatible with a successful counter-terrorism strategy, but was an essential element of it. An implementation task force established by the Secretary-General for this strategy met for the first time in New York on 13 July 2005.

5. In her report to the Commission (E/CN.4/2005/100), the High Commissioner for Human Rights affirmed that while States are obliged to take actions to combat terrorism, counter-terrorism measures must strictly respect human rights obligations; she too recognizes that certain counter-terrorism policies implemented today place human rights at considerable risk. Consistent with General Assembly and Commission on Human Rights resolutions, OHCHR continues to work towards ensuring the protection of human rights in the fight against terrorism.

6. At its sixty-first session, the Commission on Human Rights examined the report (E/CN.4/2005/103) submitted by the independent expert on the protection of human rights and fundamental freedoms while countering terrorism, Robert K. Goldman, appointed for one year pursuant to Commission resolution 2004/87, in which he highlighted several features of future mandate related to the relationship between human rights and the countering of terrorism. At that session, the Commission, in its resolution 2005/80, decided to appoint a special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Martin Scheinin was appointed Special Rapporteur on 28 July 2005. His mandate is contained in paragraph 14 of resolution 2005/80, and detailed in his report to the General Assembly at its sixtieth session (A/60/370).

7. In April 2005, OHCHR and the Department of Public Information reprinted the "Digest of Jurisprudence of the United Nations and Regional Organizations on the Protection of Human Rights while Countering Terrorism", which is currently being updated and will be reissued in due course. OHCHR has continued its dialogue with CTC and intends to deepen liaison with the CTC Executive Directorate recently appointed Human Rights Staff Expert. Together with CTC and the United Nations Office on Drugs and Crime (UNODC), OHCHR has participated in regional and national workshops on counter-terrorism measures. These include a workshop in San José from 5 to 7 October 2004, co-organized by the Inter-American Committee against Terrorism of the Organization of American States, and a mission to Paraguay from 29 November to 3 December 2004. OHCHR also participated in the Expert Workshop on "International cooperation on counter-terrorism, corruption and the fight against transnational organized crime" held in Zagreb from 7 to 9 March 2005, at which the Zagreb Declaration was adopted (A/59/754-S/2005/197).

8. The Office continued to exchange information with regional organizations. In preparation for the Secretary-General's sixth High-Level Meeting between United Nations and Regional and Other Intergovernmental Organizations on 25 and 26 July 2005, OHCHR and the Department of Political Affairs held consultations on 29 June with regional organizations on the protection of human rights in the fight against terrorism. The Office participated in the sixth High-Level Meeting, at which the Secretary-General observed the need for increased cooperation between the United Nations and regional organizations in the area of combating terrorism. At that meeting, it was agreed that participating organizations would pursue the development of a flexible mechanism to interact on the protection of human rights in counter-terrorism actions and would submit to OHCHR, as chair of the working group on that subject, specific proposals on ways in which such a mechanism could be developed, taking into account the variety of mandates and working methods of the participating organizations.

9. OHCHR provided assistance to the Sub-Commission on the Promotion and Protection of Human Rights at its fifty-seventh session, including in its sessional working group to elaborate detailed principles and guidelines concerning the promotion and protection of human rights when combating terrorism.

10. The human rights treaty bodies and special procedures continue to pay close attention to the issue of human rights and counter-terrorism within their relevant mandates and resources. In May 2005, the Committee against Torture adopted two decisions that provide important guidance in defending human rights in the counter-terrorism environment. *Agiza vs. Sweden* (CAT/C/34/D/233/2003) was the first case concerning extraordinary rendition ever adjudicated by an international human rights body. It concerned the decision of the Government of Sweden to remove to Egypt Mr. Agiza, an Egyptian national convicted in absentia for belonging to a terrorist group, based upon diplomatic assurances that he would not be tortured and would be given a fair trial. The Committee found that in the circumstances of the case it was or should have been known to the Swedish authorities that Mr. Agiza was at real risk of torture if removed to Egypt. This position was later confirmed by his treatment within Swedish jurisdiction and with the acquiescence of the Swedish police to treatment which, in the Committee's view, amounted to at least cruel, inhuman or degrading treatment. The Committee held that in the circumstances, the diplomatic assurances were insufficient to protect against the manifest risk of torture, coupled with the fact that there was no mechanism for their appropriate enforcement, and that as a result, the expulsion constituted a breach of article 3 of the Convention. The Committee also found a violation of the procedural obligation required under article 3 of the Convention to provide effective, independent and impartial review of a decision to expel. Article 22, which guarantees the right to exercise a complaint to the Committee was also frustrated by immediate execution of the expulsion. In its decision adopted on 17 May 2005 in the case of *Brada vs. France* (CAT/C/34/D/195/2002), the Committee also held that in the circumstances of the case, France had violated articles 3 and 22 of the Convention by deporting Mr. Brada to Algeria despite a real risk of torture, a position later confirmed by the domestic courts, and in breach of legally binding interim measures indicated by the Committee to stay deportation pending its final decision.

11. Some special procedures mandate holders have expressed concern over the serious impact of counter-terrorism measures on the enjoyment of human rights and fundamental freedoms. At a press conference given on 15 June 2005 during its visit to Canada, the Working Group on Arbitrary Detention expressed concern at conditions of detention under the security certificate process, in particular in regard to several of its elements that undermine detainees' rights to a fair hearing, to challenge the evidence used against them, not to incriminate themselves, and to judicial review of detention. On 23 June 2005, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention issued a joint statement expressing regret at not having received an invitation to visit the detainees held in Guantánamo Bay and informing that they would, within their mandates, conduct an investigation into the situation of these detainees. The Special Rapporteur on extrajudicial, summary or arbitrary executions, in a statement issued on 20 May 2005 in the context of his request to

visit Uzbekistan, stated that he was particularly troubled by reports that the measures taken in Andijan in May had been connected to efforts to eliminate terrorists. The treaty bodies have considered the issue in their review of State Party reports under the respective treaties.

III. Human rights, counter-terrorism and states of emergency

12. In accordance with General Assembly resolution 59/191 the High Commissioner continued to examine the question of protecting human rights and fundamental freedoms while countering terrorism and made general recommendations concerning the obligation of States in this regard. OHCHR held an expert seminar on human rights, counter-terrorism and states of emergency on 27 and 28 June 2005. The seminar's main purpose was to explore ways of strengthening human rights protection in counter-terrorism measures at the national level. The four sessions of the seminar dealt with general principles of human rights in the counter-terrorism context; national experiences with states of emergency; fundamental principles of fair trial; and torture, extradition and non-refoulement.

International legal provisions relevant to protecting human rights while countering terrorism

13. During the first session, the seminar examined applicable provisions of international human rights treaties, general comments and jurisprudence of treaty bodies, and their contribution to protecting human rights in the counter-terrorism context. Particular focus was placed on the relevance of general comments Nos. 29 (2001) and 31 (2004) of the Human Rights Committee, the monitoring body of ICCPR, and recent decisions of the Committee against Torture in defending human rights in the fight against terrorism.

14. General comment No. 29, concerning derogations during a state of emergency, was adopted on 24 July 2001. Apart from spelling out the basic tenets of article 4 of the Covenant, it recognizes the general principles that should govern any derogating measure, such as necessity and proportionality, and underlines that no derogation may be made that is inconsistent with a State's other international legal obligations. It underlines that a derogation is a truly exceptional and temporary measure that may be taken only when the life of the nation is threatened. This general comment is especially valuable because it outlines rights other than those explicitly listed in article 4, paragraph 2, of the Covenant that cannot be derogated from, including those contained in humanitarian law as well as peremptory norms of international law. Of particular relevance in the context of the issue of human rights and terrorism are the following human rights: prohibitions against taking of hostages, abductions or unacknowledged detention; prohibition of the arbitrary deprivation of liberty or deviating from fundamental principles of fair trial, including the presumption of innocence; barring imposing collective punishment, and the obligation to treat prisoners humanely. General comment No. 29 also indicates that no state of emergency can justify the incitement of discrimination and no derogating measure may involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. It reaffirms that safeguards related to derogation include

the non-derogable principles of legality contained in article 15 of ICCPR and the fundamental requirements of fair trial.

15. General comment No. 31 on the nature of the general legal obligations imposed on States parties was adopted on 29 March 2004. Article 2, paragraph 1, of ICCPR obliges States to ensure Covenant rights to all individuals within their territory and subject to their jurisdictions. The general comment interprets this obligation as having extraterritorial reach where persons are within the power or effective control of the State party, even if not situated in the territory of the State party. By virtue of these responsibilities, a State party is prohibited to extradite, expel, deport or remove a person, especially when there are substantial grounds for believing there is a real risk of torture or other serious harm.

States of emergency — some national examples

16. The second session of the expert seminar complemented the discussion of general comment No. 29 by examining some national experiences with states of emergencies. It was recalled that before invoking article 4 of ICCPR, a State party had to officially proclaim a state of emergency and to act within its national constitutional and legal provisions governing such declarations and the exercise of emergency powers. The discussions revealed that where there were no constitutional or other legal provisions to guarantee that the judiciary retain its power to control during a state of emergency, there was a serious risk that the effective protection of human rights would suffer. Similarly, when the courts or legislator uncritically deferred to the executive's asserted security needs, the consequences for human rights may be serious.

17. Several national experiences revealed that national courts have often played a positive role in ascertaining the limits of executive power with regard to emergency laws. Some courts have found some laws unconstitutional because they evidenced no circumstances giving rise to a state of emergency. In other cases, some decrees were also deemed unconstitutional when they were extended, contrary to the procedures laid down in the Constitution. Still in other cases, domestic proceedings have referred to international human rights law, including general comment No. 29, as in the case of the decision of the House of Lords in *A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)*.

Fundamental principles of, and challenges, to fair trial

18. The third session of the seminar looked at issues regarding fundamental principles of fair trial and recalled that even in a state of emergency, the right to be tried by an independent and impartial tribunal, should be upheld, as well as the right to be heard and to challenge the legality of one's detention; the right to a defence; and the presumption of innocence. Only a court may try and convict a person for a criminal offence, and any evidence gained as a result of torture must be excluded.

19. However, while States are obliged to implement Security Council resolution 1373 (2001) by bringing terrorist suspects to justice, the legal regime to be applied to terrorist suspects is sometimes unclear and the lack of consensus on a definition of terrorism contributes to doubts over respect for the principle of legality. The session discussed ways of ensuring that the right to a fair trial is respected at the

national level. General comment No. 29 makes the important observation that where the death penalty is contemplated as a sentence, all rights to a fair trial contained in article 14 of ICCPR must be respected. Cases were cited that indicated that the combination of the prospect of an unfair trial with the sentence of the death penalty might amount to inhumane treatment. While some adjustments can be made in judicial proceedings for security concerns, any exceptions to the right to a fair trial in counter-terrorist cases must be strictly required by the exigencies of the situation.

20. The discussion of national experiences during this session further confirmed that even with these guarantees in mind, the current counter-terrorism environment is producing serious human rights violations. Even if the legal framework of a country respects rights, there are failings in practice that produce human rights violations.

Principle of non-refoulement and preventing torture in the counter-terrorism context

21. The last session of the seminar recalled that the principle of non-refoulement and the absolute prohibition of torture are peremptory norms of general international law applicable in all situations whatever the circumstances. However, in the counter-terrorism context, their application has at times been complicated, not least by the differing application by various countries. While there is genuine and legitimate concern that terrorists should not use refugee status to shield behind or to access safe havens, counter-terrorism measures must be in conformity with obligations under international refugee law, as stressed in Security Council resolution 1456 (2003). Efforts to fight terrorism should not suggest any automatic link between refugees and terrorists; such an assumption would be both unfair and prejudicial to asylum-seekers and would inappropriately restrict the rights of refugees, particularly in terms of fair assessment procedures. Moreover, such an approach is unwarranted, since the Convention relating to the Status of Refugees of 1951 already contains safeguards in its exclusion clauses and foresees the possibility to expel refugees in certain circumstances. Article 1 (F) denies refugee status to any person where there are serious reasons that he/she has committed one of the following crimes: crimes against peace, war crimes, crimes against humanity, serious non-political crimes, and acts contrary to the purposes and principles of the United Nations. A host State would therefore be acting in keeping with its obligations under the Convention if it denied refugee status to persons who are security concerns within the meaning of article 1, and could expel them under the terms of article 32. In such cases, the host State can expel the person to another country other than where he or she risks persecution as long as certain due process guarantees have been complied with. The cornerstone principle of non-refoulement obliges States not to return a refugee to a country where his or her life or liberty would be threatened on Convention grounds. Article 33, paragraph 1, applies fully in the context of extradition. The only exception to this principle is that the benefit of the Convention cannot be claimed by a refugee where he is reasonably suspected to be a danger to the security of the country which he is in, or after being convicted of a serious crime, is a danger to the community of that country. Even if these criteria are met, the exceptions to the non-refoulement principles are limited by the jus cogens prohibition of returning a person to a place where he or she is likely to be subject to torture.

22. Asylum-seekers are protected by article 33, paragraph 1 until a final decision has been taken or their status has been made. An extradition request does not render a person ineligible for determination of refugee status. The request has to be determined according to the normal asylum procedures with full due process, despite the extradition request. Since these limitation provisions restrict the fundamental right to asylum, they must be interpreted restrictively. If applied properly, they provide certain checks and balances to protect individual rights while maintaining security. The rules already existing in the Convention therefore enable States to comply with Security Council resolution 1373, which obliges States to prevent abuse of asylum by terrorist suspects.

23. The question then is whether there is a need for a formal and binding international instrument for the transfer of persons across borders due to the risk of torture or mistreatment. It was noted that some bilateral agreements on extradition are of an ad hoc nature and offer no real guarantees for due process. Moreover, there are ways to avoid formal extradition processes, such as abduction and administrative detention. On the issue of diplomatic assurances, two major problems arise -- that of sufficiency of the assurances and that of the implication that torture is commonplace in the country concerned but will not be applied in a particular case in question. The view was thus that diplomatic assurances are not sufficient and should not be given weight when a refugee is returned.

Issues identified for follow-up

24. Certain issues were identified during the seminar as requiring further attention. These include paying more attention to the rights of victims of terrorism; ensuring that general comments Nos. 29 and 31 are widely disseminated and known by those involved in counter-terrorism measures; ensuring that technical cooperation programmes in the area of counter-terrorism are comprehensive and include human rights; and examining the implications of military justice on the right to fair trial, taking into account the work of the Sub-Commission on the Promotion and Protection of Human Rights. Two practical follow-up actions were suggested. The first was to explore ways of engaging human rights and security experts together to ensure that the dual objectives of countering terrorism and ensuring respect for human rights are met in practice; and the second, to study and record best practices in the area of protecting human rights in the counter-terrorism environment.

IV. Conclusions

25. **While States have the duty to protect their citizens against terrorism, counter-terrorist measures must be in conformity with international human rights, humanitarian and refugee law. The Secretary-General, the High Commissioner for Human Rights, and many human rights experts continue to express concern that many counter-terrorism measures are infringing on human rights and fundamental freedoms.**

26. **The human rights treaty bodies and special procedures continue to pay close attention to the issue of human rights and counter-terrorism within their relevant mandates and resources. OHCHR, in accordance with General Assembly and Commission on Human Rights mandates, continues to examine**

issues and ways of defending human rights in the counter-terrorism context. It is continuing its dialogue with CTC and expects to deepen cooperation in the future.

27. **The appointment of the Special Rapporteur of the Commission on Human Rights on the promotion and protection of human rights while countering terrorism is an especially important development in the struggle to ensure that international human rights, humanitarian and refugee law are respected in the fight against terrorism.**

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Security Council
Sixtieth year

Letter dated 22 September 2005 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a letter dated 15 September 2005 addressed to you by His Excellency Mr. Reşat Çağlar, Representative of the Turkish Republic of Northern Cyprus (see annex).

I should be grateful if the text of the present letter and its annex could be circulated as a document of the General Assembly under agenda item 19, and of the Security Council.

(*Signed*) Baki **İlkin**
Ambassador
Permanent Representative

05-52042 (E) 260905

Annex to the letter dated 22 September 2005 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to refer to the letter dated 19 August 2005, addressed to you by the Greek Cypriot Representative and circulated as a document of the General Assembly and of the Security Council on 23 August 2005 (A/59/899-S/2005/537) which contains distortions and misinformation regarding the intentions of the Turkish Cypriot leadership.

Citing the misquoted extracts from the text of an interview given by President Mehmet Ali Talat to the Turkish Weekly, the New Anatolian, published on 8 August 2005, the Greek Cypriot representative makes a baseless claim that President Talat's main preoccupation is the recognition of the TRNC rather than a negotiated settlement on the island.

The fact of the matter is that such words have not been uttered by the Turkish Cypriot leader during that interview. It was obviously a case of a misquotation, and the newspaper in question has issued a correction on 13 September 2005 stating "..... *due to an error in translation, Mr. Talat was incorrectly quoted in our newspaper as saying 'the meaning of our proposal is to achieve the last phase before full recognition in exchange of Maraş (Varosha)'. That expression did not take place in the original records of the interview which was conducted in Turkish. We hereby state that the aforementioned expression in quotes goes beyond what was in fact said. The New Anatolian acknowledges our mistake and does not want this quotation to be ascribed to TRNC President Mr. Talat*". However, in furtherance of its campaign of misinformation, the Greek Cypriot side has wasted no time in hastily responding without confirming the news from its source.

The futility of this claim becomes evident when considered against the mountain of evidence to the contrary. President Talat's unequivocal support for the Annan Plan in the run up to the referenda is in line with his decades-old vision for settlement in the island. In fact, Your Excellency has attested to this reality in your mission of good offices report of 28 May 2004, as follows: "*.... I wish to record, however, my appreciation of the efforts of Mr. Talat both in the process and in the run-up to the referendum*".

The Greek Cypriot representative exploits this aforementioned misquotation to portray our efforts to end the inhuman isolation of the Turkish Cypriot people as a temporary objective on the road toward full recognition. In line with the letter and spirit of your mission of good offices report (S/2004/437) dated 28 May 2004, as well the declaration of the EU Council of Ministers dated 26 April 2004, we have always stated that ending the isolation of the Turkish Cypriot people is not an end in itself nor a substitute to a negotiated settlement in the island, but a necessary step that would facilitate the reunification of Cyprus through bridging the economic gap between the two sides. It will also be instrumental in showing to the Greek Cypriot side that its policy of total strangulation of the Turkish Cypriot people is bound to fail and thus it should return to the negotiating table with the right frame of mind for a comprehensive settlement of the Cyprus problem.

The Greek Cypriot recount of the talks between the two sides in Brussels in June 2005 on the two draft regulations of the EU Commission on Northern Cyprus, namely the financial aid and direct trade regulations, is also misleading. As you are well aware, the Greek Cypriot leadership continues to block the adoption by the EU Council of these two regulations. The uncompromising position assumed by the Greek Cypriot leadership in the deliberations of EU has so far rendered EU efforts unsuccessful. Still, it was important as it revealed, once again, that under no circumstances the Greek Cypriot leadership will consent to the lifting of the isolation of the Turkish Cypriot people as it constitutes one of the cornerstones of its policies in Cyprus.

Our offer to return Maraş (Varosha) for resettlement was a sincere effort to keep up the spirit of give and take, taking into account continuous calls of the Greek Cypriot side for such a move. However, sticking to its maximalist position, the Greek Cypriot leadership rejected it off hand, showing again that as far as the Greek Cypriot leadership is concerned words and deeds invariably differ.

The attempt made in the letter to justify the continuation of the isolation of the Turkish Cypriot people by invoking the UN Security Council resolutions 541 (1983) and 550 (1984) is irrelevant. The interpretation of these resolutions as such, particularly in the light of the expressed will of the Turkish Cypriot people for the unification of island in the 24 April 2004 referendum, is to say the least, peculiar. In this context , I would like to refer to your mission of good offices report (S/2004/437) dated 28 May 2004, in which you stated and I quote: "*I would hope they (members of the Security Council) can give a strong lead to all states to cooperate both bilaterally and in international bodies to eliminate unnecessary restrictions and barriers that have the effect of isolating the Turkish Cypriots and impeding their development deeming such a move as consistent with Security Council resolutions 541 (1983) and 550 (1984)*".

Regarding the Greek Cypriot representative's remarks pertaining to a political settlement in Cyprus, I would like to refer, once again, to the same report, in which you stated and I quote: "*what was rejected (by the Greek Cypriots) was the solution itself rather than a mere blueprint.....if the Greek Cypriots are ready to share power and responsibility with the Turkish Cypriots in a federal structure based on political equality, this needs to be demonstrated, not just by words, but by action*" and "*if they (Greek Cypriots) remain willing to resolve the Cyprus problem through a bicommunal, bizonal federation, this needs to be demonstrated. Lingering Greek Cypriot concerns about security and implementation of the plan need to be articulated with clarity and finality*". Despite this call being reiterated by Your Excellency on various occasions, it has not yet been properly responded by the Greek Cypriot leadership. The failure and the unwillingness of the Greek Cypriot side to do so

clearly demonstrate that it is not, and has never been, interested in a mutually acceptable settlement, despite continuously professing to the contrary.

Turkish Cypriot people are for a new partnership in Cyprus as unequivocally reflected in the results of the referenda held in the island last year. Bizonality, political equality and the continuation of the 1960 system of guarantees are essential ingredients of a viable and lasting settlement. In order to have a realistic chance of achieving this goal, the Turkish Cypriot side must have a negotiating partner who is willing and able to negotiate for a new partnership free of the devious tactics employed hitherto. As a first step, the Greek Cypriot side, without further delay, should heed to Your Excellency's call and pronounce itself with "clarity and finality" on the questions put to it by Your Excellency.

I should be grateful if the text of the present letter could be circulated as a document of the General Assembly, under agenda item 19, and of the Security Council.

(Signed) Reşat Çağlar
Representative